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OFFICE OF PETITIONS

In re Application of :
Li et al. :
Application No. 10/042,762 : DECISION GRANTING PETITION
Filed: 22 February, 2002 :
Attorney Docket No. US020053 :
:

This is a decision on the petition filed on 6 May, 2003 (certificate of mailing 30 April, 2003) which is treated as a petition filed under 37 CFR 1.10(e)¹, requesting that the above-identified application be accorded a filing date of 22 February, 2002.

¹37 CFR 1.10(e) provides that:

Any person mailing correspondence properly addressed to the Office with sufficient postage utilizing "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Petitioners allege that the application was deposited in "Express Mail" service with the U.S. Postal Service on 22 February, 2002. In support, petitioner provided a copy of the Express Mail label, receipt No. EV031697462US, showing a "Date-in" of 22 February, 2002. The same Express Mail receipt number was referred to on the itemized Utility Patent Application Transmittal sheet submitted with the present petition. Petitioner have provided a copy of 21 pages of specification and claims (including one (1) page of abstract), and six (6) sheets of drawings, a declaration in compliance with 37 CFR 1.63, an Information Disclosure Statement, and a Recordation Form Cover Sheet and assignment. Petitioners have also provided an itemized postcard receipt, bearing an "Office-date" stamp of 02/22/02, and identifying the application by docket number and invention title, itemizing the filing of, *inter alia*, 21 pages of specification, claims, and abstract, and six (6) sheets of drawings.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label.² That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the USPS on 22 February, 2002.

The application will be processed with a filing date of 22 February, 2002, using the copies of the application papers supplied on 6 May, 2003.

In view of the above, the petition is granted. No petition fee is due and none has been charged.

The application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of 22 February, 2002, using the application papers supplied with the present petition.

Telephone inquiries specific to this matter should be directed to the undersigned at 703 308-6918.



Douglas I. Wood
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²MPEP 513.